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NO. 85-1694

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

LOUIE L. WAINWRIGHT,
Secretary, Florida Department of
Corrections,

Petitioner,

v.

WILLIE WESLEY HORACE,

Respondent.

RESPONSE OF WILLIE WESLEY HORACE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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June 25, 1986

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER FLORIDA LAW IS OFFENDED BY A PRESUMPTIVELY INCOMPETENT PERSON WAIVING HIS DUE PROCESS RIGHT TO A HEARING TO DETERMINE HIS COMPETENCY TO STAND TRIAL.

II. WHETHER FEDERAL HABEAS CORPUS REVIEW OF INCOMPETENCY CLAIMS IS BARRED BY THE PROCEDURAL DEFAULT RULE WHERE DEFENDANT FAILS TO REQUEST A COMPETENCY HEARING AT TRIAL AND DOES NOT PURSUE THE INCOMPETENCY CLAIMS ON DIRECT APPEAL.

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OPINION BELOW

The decision below is reported at Horace v. Wainwright, 781 F.2d 1558 (11th Cir. 1986).

Petitioner did not file a petition for rehearing or a suggestion of en banc consideration in the court below.

REASONS WHY WRIT SHOULD BE DENIED

I. A PRESUMPTIVELY INCOMPETENT PERSON IS INCAPABLE OF WAIVING HIS FLORIDA AND DUE PROCESS RIGHT TO A COMPETENCY HEARING.

There are no special or important reasons for granting the writ of certiorari on this issue. Respondent does not contest the holding in Wainwright v. Goode, 464 U.S. 78, 104 S.Ct. 378 (1983). The thorough discussion of controlling Florida Supreme Court law in the opinion below makes clear that the Eleventh Circuit Court of Appeals recognized and abided by its duty to apply binding Florida law.

Petitioner utilizes this issue to express its disagreement with the lower court's interpretation of Florida law. Curiously, Petitioner's brief below did not cite any of the Florida authorities it now alleges should yield a different result. Moreover, even after receiving the opinion below, which Petitioner alleges evinces a misunderstanding or misapplication of binding Florida precedent, Petitioner failed to file a petition for rehearing to share its newly cited Florida authority.

Petitioner argues that by its opinion, the court below has determined that Florida law contemplates that where the trial court has reasonable cause to believe that an accused is incompetent, it must conduct a full hearing and cannot rely on written reports in making a competency finding (Pet. Cert. 12). Petitioner provides a list of citations for the proposition that a competency to stand trial finding may be based upon written reports where the accused waives his right to a hearing (Pet. Cert. 18). Respondent agrees with the latter proposition. However, this general statement of law has no applicability to a case such as this where the accused has a previous formal adjudication of incompetency which has not been restored.

The error in Petitioner's reliance on general law is plain. Ordinarily, there exists a presumption of competency. Thus, one who is sui juris may waive his right to a hearing on the question of his competency to stand trial. However, one who has been previously adjudged incompetent, absent formal restoration of sanity, is presumed to remain incompetent. Horace v. Culver, 111 So.2d 670 (Fla. 1959). Clearly, one who is presumed incompetent and therefore not sui juris, is incapable of waiving his due process right to have his competency determined.

Petitioner cites no authority for its argument that the proceedings on remand of Horace v. Culver, supra, is the functional equivalent of formal restoration of sanity. Assuming arguendo that Horace's competency to stand trial was properly decided in 1960, there is no authority for the notion that the presumption of continuing incompetency, which results from a

prior, unrestored civil adjudication of incompetency, is forever terminated by a later finding of competency in a criminal case. The Florida Statute under which Horace was civilly adjudged incompetent and committed (Section 394.20 (1949)), provides the only method for restoring competency, and thus terminating the presumption of incompetency (Section 394.22 (4), Florida Statutes (1949)). That is not to say that the presumption may not be rebutted in a particular criminal matter absent formal restoration. Eason v. State, 421 So.2d 35 (Fla. 3d DCA 1982). Rather, even if rebutted later, that subsequent determination of competency covers only the time period relating to that particular proceeding. Price v. Wainwright, 759 F.2d 1549, 1552-1553 (11th Cir. 1985). Any other interpretation would change well settled Florida law and ignore Chapter 394 of the Florida Statutes (1949).

Additionally, this case is not cert-worthy because the lower court's decision is supportable on at least two other grounds which are wholly unchallenged by Petitioner.

First, there was no evidence introduced or a finding made by the trial court that Horace was sane at the time of the alleged offense. Horace v. Culver, supra, makes clear that the continuing presumption of incompetency applies to the time of the act as well as to the time of trial and conviction. Indeed, the trial judge here specifically declined to make any finding of competency at the time of the act. Horace v. Wainwright, 781 F. 2d 1558, 1563 (11th Cir. 1986).

Finally, the court below ruled that Horace's guilty plea was not knowingly and voluntarily entered because he was not advised of the potential consequences of the plea (life imprisonment) until it was imposed. 781 F.2d at 1564.

II. FEDERAL HABEAS CORPUS REVIEW OF INCOMPETENCY CLAIMS IS NOT BARRED BY THE PROCEDURAL DEFAULT RULE EVEN WHERE DEFENDANT FAILS TO REQUEST A COMPETENCY HEARING AT TRIAL AND DOES NOT PURSUE THE INCOMPETENCY CLAIMS ON DIRECT APPEAL.

Petitioner alleges a conflict between the opinion below and Wainwright v. Sykes, 433 U.S. 72, 97 S.Ct. 2497 (1977). No such conflict exists and Petitioner advances no other reasons why this court should exercise its discretionary review on this issue of rare occurrence.

This Court stated in Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836 (1966), that "it is contradictory to argue that a Defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have the court determine his capacity to stand trial. Id. at 384, 86 S.Ct. at 841.

Aside from the contradiction described in Pate, Florida explicitly recognizes collateral attack as an appropriate vehicle to raise Horace v. Culver issues. Cioli v. State, 303 So.2d 82 (Fla. 4th DCA 1974); Livingston v. State, 383 So.2d 947 (Fla. 2d DCA 1980). Moreover, ignorance or good faith of the court and prosecuting officers does not save the legal impediment otherwise resulting from a prior adjudication of incompetency. Alexander v. State, 380 So.2d 1188, 1189 (Fla. 5th DCA 1980); Horace v.

Culver, supra. Additionally, a guilty plea clearly does not waive the defect of a record containing insufficient evidence to overcome the presumption of incompetency which arises from a prior adjudication of incompetency. Yates v. Wainwright, 151 So. 2d 832 (Fla. 1962); Dixon v. Cochran, 142 So.2d 5 (Fla. 1962); Livingston v. State, supra.

Horace was not advised of his right to take a direct appeal. Procedural default was neither argued, nor was it invoked by the Florida courts in denying relief. Where, as here, the state courts do not apply a procedural bar, federal courts show no disrespect in entertaining the merits of the claim. County Court of Ulster County v. Allen, 442 U.S. 140, 99 S.Ct. 2213 (1979).

CONCLUSION

The petition for writ of certiorari lacks the character of reasons which render it worthy of discretionary review. The conflict alleged by Petitioner is illusory in that the Eleventh Circuit expressly considered binding Florida Supreme Court authority.

Review of this case is unlikely to promote the development of law since the underlying historical facts are extremely unusual. Moreover, the decision below is plainly correct not only with respect to the two issues raised here, but also with respect to two unchallenged grounds for relief.

Accordingly, Respondent-WILLIE WESLEY HORACE, respectfully requests this Honorable Court to deny the petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response to Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit, has been furnished to Kurt L. Barch, Assistant Attorney General, The Capitol, Suite 1502, Tallahassee, Florida, 32301, by mail this 25th day of June 1986.

Howard W. Skinner
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